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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
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THE STATE OF ARIZONA, Appellee, v. JUAN CASTRO ORTIZ, Appellant.	)	2 CA-CR 2007-0374 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20064248

Honorable John S. Leonardo, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
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H O W A R D, Presiding Judge.

¶1 After a jury trial, appellant Juan Castro Ortiz was convicted of possession of a prohibited weapon, possession of a deadly weapon by a prohibited possessor, and unlawful discharge of a firearm within or into the city limits. On appeal, Ortiz contends that the trial court abused its discretion when it refused to appoint him new counsel, that his right to be present during trial was violated because his absence from the courtroom was involuntary under the circumstances, and that the trial court committed fundamental error when it refused to allow defense counsel to question a witness regarding threats of prosecution if he refused to testify. Because none of these contentions merits reversal, we affirm.

Denial of Motion for New Counsel

¶2 Ortiz first argues the trial court erred in refusing his request to have new counsel appointed because an irreconcilable conflict existed between Ortiz and his court-appointed attorney. We review the trial court's decision on a motion to substitute counsel for a clear abuse of discretion. *State v. Moody*, 192 Ariz. 505, ¶ 11, 968 P.2d 578, 580 (1998).

¶3 A criminal defendant has a Sixth Amendment right to representation. U.S. Const. amend. VI; *see also* Ariz. Const. art. II, § 24; A.R.S. § 13-114(2). But a defendant is not "entitled to counsel of choice, or to a meaningful relationship with his or her attorney." *Moody*, 192 Ariz. 505, ¶ 11, 968 P.2d at 580. When evaluating a request for new counsel, the trial court must "balance the rights and interests of a defendant with judicial economy," *id.*, by considering the following factors:

> whether an irreconcilable conflict exists between counsel and the accused, and whether new counsel would be confronted with the same conflict; the timing of the motion; inconvenience to witnesses; the time period already elapsed between the alleged offense and trial; the proclivity of the defendant to change counsel; and quality of counsel.

State v. LaGrand, 152 Ariz. 483, 486-87, 733 P.2d 1066, 1069-70 (1987). "Unlike other factors, the presence of a genuine irreconcilable conflict *requires* the appointment of new counsel." *State v. Henry*, 189 Ariz. 542, 547, 944 P.2d 57, 62 (1997). But to show an irreconcilable conflict, "a defendant's allegations must go beyond personality conflicts or disagreements with counsel over trial strategy." *State v. Cromwell*, 211 Ariz. 181, ¶ 30, 119 P.3d 448, 454 (2005).

¶4 On the first day of his scheduled jury trial, Ortiz's attorney informed the trial court that Ortiz wished to have new counsel appointed, claiming that Ortiz was upset with his attorney's decision not to file a motion to suppress. The court denied Ortiz's request for a new lawyer, and jury selection began. After the jury was selected, Ortiz loudly accused his attorney of calling him a racial slur. His attorney denied having done so. Although the court told Ortiz that he would be removed from the courtroom if he continued to make such statements, Ortiz continued and was subsequently removed from the courtroom.

¶5 Ortiz's court-appointed lawyer then requested that Ortiz be appointed new counsel and moved to withdraw. In support of this request, a sheriff's deputy who had spoken with Ortiz stated to the court that Ortiz had informed him that he had "nothing to lose by stabbing [his attorney] in the neck with a pen." At the direction of the court, Ortiz's attorney

then attempted to speak with Ortiz, although Ortiz refused to communicate. The deputy further stated that Ortiz was typically respectful and only became "very loud, belligerent, very agitated" when the attorney was present. Avowing that the relationship between himself and Ortiz was "irretrievably broken," Ortiz's attorney informed the court that he did not believe he could effectively represent Ortiz at trial. Ortiz's attorney again requested that the court appoint Ortiz new counsel, telling the court that Ortiz should be given one chance for new representation. The trial court noted that Ortiz had not expressed dissatisfaction with his attorney until the start of trial and, therefore, it was likely that Ortiz's conduct was "just another attempt to delay the proceedings." The court nevertheless agreed to consider Ortiz's request for a new attorney overnight.

¶6 The next morning, Ortiz was permitted to re-enter the courtroom. As soon as he saw his attorney, Ortiz reacted negatively, shouting various offensive phrases and demanding to know why his original lawyer was still on the case. Even when threatened with removal from the courtroom, Ortiz continued to shout epithets at his attorney. The trial court then removed Ortiz, and subsequently held a hearing on his motion for new counsel, eventually denying Ortiz's new motion. When informed that his motion for new counsel was denied, Ortiz promised not to be disruptive if given a new attorney but would not make such a promise if forced to continue with his current counsel. Ortiz was then removed from the courtroom, this time for the duration of the trial. He was told he could return when he could control himself.

¶7 Ortiz's discontent with his attorney's tactical decision not to file the motion to suppress does not rise to the level of irreconcilable differences. *See State v. Bible*, 175 Ariz. 549, 591, 858 P.2d 1152, 1194 (1993) (defendant and attorney disagreement over trial strategy insufficient to justify new representation). Ortiz's own attorney described Ortiz's outburst concerning the racial slur as "an obvious attempt for a mistrial" and "to disrupt the proceedings." The trial court reasonably could have found that Ortiz's outbursts were nothing more than an attempt to force the trial court to appoint him new counsel on the first day of trial or to declare a mistrial, which would improve his chance of obtaining new counsel.

¶8 Ortiz contends, however, that this case is akin to *Moody*, that a genuine irreconcilable conflict existed between himself and his court-appointed attorney, and that the trial court was therefore *required* to grant his request for new counsel. In *Moody*, the record was "replete with examples of a deep and irreconcilable conflict" between the defendant and his appointed attorney. 192 Ariz. 505, ¶ 13, 968 P.2d at 507. Months before trial, Moody's attorney filed two motions to withdraw from the case, alleging that Moody had "developed an obsessive hatred for his attorney." *Id.* ¶¶ 7-8. When the trial court denied these motions, Moody himself filed a motion for self-representation, stating "that he was being forced to accept [his court-appointed lawyer] against his will." *Id*. ¶ 9.

¶9 Ortiz's reliance on *Moody* is, however, misplaced. Moody's attorney requested new counsel months before trial, *id*. ¶¶ 7-8, but Ortiz did not request a new attorney until the day of trial. Moreover, both Moody and his attorney were consistently and openly

antagonistic toward each other for an extended period of time and the antagonism involved the entire relationship, not a single issue. *Id.* ¶¶ 16-20. Ortiz's antagonism here focused on a single issue. No personality or other conflict appears in the record. Furthermore, Ortiz's attorney was never antagonistic toward Ortiz in any way. His attorney's request that he be relieved due to a conflict does not mandate a change of counsel. *See, e.g.*, *Henry*, 189 Ariz. at 545, 547, 944 P.2d at 60, 62 (supreme court affirmed trial court denial of motion for new counsel even though defendant claimed irreconcilable differences and attorney moved to withdraw); *LaGrand*, 152 Ariz. at 486-87, 733 P.2d at 1069-70 (supreme court affirmed trial court denial of motion for new counsel even though defendant and attorney both requested new counsel be appointed).

¶10 Additionally, Ortiz did not complain about his attorney until the eve of trial and the antagonism centered on a matter of trial strategy. *See Cromwell*, 211 Ariz. 181, ¶ 30, 119 P.3d at 454 (disagreements over trial strategy not irreconcilable conflict). And, as the state points out, Ortiz apparently cooperated with this same attorney during sentencing, undermining his claim that there existed an irreconcilable conflict. *See State v. Torres*, 208 Ariz. 340, ¶ 16, 93 P.3d 1056, 1061 (2004) (subsequent events may be relevant to show whether irreconcilable conflict existed).

¶11 "[W]e defer to the discretion of the trial judge who has seen and heard the parties to the dispute." *Cromwell*, 211 Ariz. 181, ¶ 37, 119 P.3d at 455. Here, the trial court noted that Ortiz's behavior toward his attorney during trial was not evidence that the two had

irreconcilable differences but instead "just another attempt to delay and disrupt the proceedings." If this court rewards Ortiz by granting him a new trial, any defendant who disagrees with his court-appointed counsel's tactical decisions at any time can require the court to appoint different counsel by refusing to cooperate with counsel and disrupting the proceedings, claiming there are irreconcilable differences between them. *See State v. Irvine*, 547 N.W.2d 177, ¶ 15 (S.D. 1996) ("[A] defendant is not entitled to substitution of counsel where the breakdown in the attorney/client relationship is caused by his own refusal to cooperate with his attorney."). By his actions, Ortiz unjustifiably caused whatever problems he had with counsel because he wanted a motion filed. We cannot say the trial court abused its discretion in finding that no irreconcilable difference existed.

¶12 Ortiz also argues the factors identified in *LaGrand* require that we find the trial court abused its discretion. 152 Ariz. at 486-87, 733 P.2d at 1069-70. But we have concluded above that the trial court reasonably could have found no irreconcilable conflict existed. And the trial court also reasonably determined that new counsel would have been faced with the same conflict if new counsel decided not to file the same motion. The court also could have found that the timing of the request for new counsel, the inconvenience of the witnesses, and the quality of counsel militated against the change of counsel. Accordingly, we cannot say the trial court abused its discretion in denying the motion for change of counsel.

Ortiz's Right to be Present at Trial

¶13 Ortiz next argues that the trial court violated his constitutional right to be present at trial when the court ordered Ortiz be removed from trial if he could not cooperate with his attorney. We review the trial court's decision to remove Ortiz for an abuse of discretion. *See State v. Jones*, 26 Ariz. App. 68, 73, 546 P.2d 45, 50 (1976) (trial court has "considerable latitude" to determine whether a defendant should be removed from the courtroom until he promises to conduct himself properly).

¶14 A criminal defendant has the right to be present at his trial. U.S. Const. amend. VI; *see also Illinois v. Allen*, 397 U.S. 337, 342-43 (1970). A defendant can forfeit this right, however, if, "after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom." *Allen*, 397 U.S. at 343. It is not unconstitutional for a trial court to exercise its discretion to remove a disruptive defendant from the courtroom until that defendant is willing to conduct himself appropriately. *See id.* at 343-44; *see also State v. Delvecchio*, 110 Ariz. 396, 400, 519 P.2d 1137, 1141 (1974) (when defendant insists on disobeying court rules, the trial judge may remove defendant from the courtroom).

¶15 During trial, Ortiz used foul language in the courtroom when referring to his attorney. Before proceeding with the trial, the judge informed Ortiz that he could not attend the trial if he insisted upon being disruptive. Ortiz responded with more foul language and

was removed from the courtroom. Eventually, the trial court permitted Ortiz to re-enter the courtroom. The court then informed Ortiz that his motion to remove his attorney from the case was denied and asked Ortiz whether he would continue to be disruptive during trial. Ortiz responded that he would not be disruptive if given a new attorney but could not promise not to disrupt the proceedings if forced to continue with his current representation. The trial court then explained to Ortiz that he would be prohibited from attending trial if he could not promise not to be disruptive, but informed Ortiz that he had the option of attending trial if he later determined that he would be able to behave appropriately in the courtroom. Ortiz responded that he wished to attend his trial but if he was required to be defended by his current attorney, he would be disruptive. Ortiz was subsequently ordered removed from the courtroom.

¶16 In *Allen*, the Supreme Court held that a defendant can lose the right to be present at trial if he insists on engaging in "disorderly, disruptive, and disrespectful" behavior in court after being warned that such behavior will result in removal. 397 U.S. at 343; *see also Delvecchio*, 110 Ariz. at 400, 519 P.2d at 1141 (when defendant insists on disobeying court rules, the trial judge may remove defendant from the courtroom); *Jones*, 26 Ariz. App. at 73, 546 P.2d at 50 (trial court has authority to remove disruptive defendant from courtroom "until he promises to conduct himself properly"). Here, the trial court repeatedly warned Ortiz that he would be removed from trial if he insisted on being disruptive. Because Ortiz informed the trial court that the disruptions would nonetheless continue, the court did not

abuse its discretion when it removed Ortiz from the courtroom until he could promise not to disrupt the proceedings.

¶17 Nevertheless, relying on *State v. Garcia-Contreras*, 191 Ariz. 144, ¶ 9, 953 P.2d 536, 539 (1998), Ortiz contends that a defendant can only be excluded from trial if he voluntarily relinquishes the right to attend. But that case acknowledges that a defendant is not involuntarily excluded if he can choose between "meaningful alternatives." *Id.* ¶ 11. Here, Ortiz merely had to agree to conduct himself properly to remain in the courtroom, but he refused. He had a meaningful alternative and "true freedom of choice." *Id.*

Cross-Examination of State's Witness

¶18 Ortiz finally contends that the trial court erred by improperly limiting his cross-examination of a witness, thereby preventing Ortiz from impeaching the witness's credibility. We review a trial court's limitation of cross-examination of witnesses for an abuse of discretion. *See State v. Sucharew*, 205 Ariz. 16, ¶ 9, 66 P.3d 59, 64 (App. 2003).

¶19 In their discretion, judges "may place reasonable limits upon the scope of cross-examination, without infringing upon the defendant's right of confrontation." *State v. Lehr*, 201 Ariz. 509, ¶ 30, 38 P.3d 1172, 1181 (2002). A limitation is reasonable, and therefore permissible, unless "'the defendant has been denied the opportunity of presenting to the trier of fact information which bears either on the issues in the case or on the credibility of the witness[es].'" *Id.*, *quoting State v. Fleming*, 117 Ariz. 122, 125, 571 P.2d 268, 271 (1977) (addition in *Lehr*).

¶20 Ortiz's attorney was allowed to cross-examine the witness on every fact relevant to whether he was coerced into testifying by the prosecutor or police. The trial court only limited cross-examination relating to a conversation between the witness and Ortiz's attorney. Despite this limitation, however, Ortiz was still permitted to elicit all evidence bearing on the witness's credibility. Although Ortiz complains that the trial court's reasoning for limiting the cross-examination was "flawed," because the trial court reached the right result, we would affirm Ortiz's conviction even if we disagreed with the trial court's reasoning. *See State v. Saiers*, 196 Ariz. 20, ¶ 15, 992 P.2d 612, 616 (App. 1999). Accordingly, the court did not abuse its discretion by limiting the witness's testimony.

Conclusion

¶21 In light of the foregoing, we affirm Ortiz's convictions and sentences.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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J. WILLIAM BRAMMER, JR., Judge